

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSE ADAN MONCADA-HERRERA

Defendant.

No. 1:22-CR-026-H-BU

MEMORANDUM OPINION AND ORDER

Jose Adan Moncada-Herrera was originally charged with one count of illegal reentry following removal, in violation of 8 U.S.C. § 1326. The government sought to detain Moncada pending trial, arguing that he posed a serious risk of flight given his immigration status. Dkt. No. 3. Per a standing order of this Court, the issue of detention was referred to Magistrate Judge John R. Parker for resolution. N.D. Tex. Special Order No. 3-251. Judge Parker held a hearing on the government's motion to detain. Dkt. No. 11; *see* Dkt. No. 20 (transcript of detention hearing). Having considered the evidence and the parties' arguments, Judge Parker concluded that the government had not met its burden to prove by a preponderance of the evidence that no combination of conditions could counteract the serious risk that the defendant would flee, so he denied the government's motion to detain. Dkt. No. 18; *see* 18 U.S.C. § 3142(f). Judge Parker ordered that Moncada be released pending trial.

The government immediately sought a stay of Judge Parker's release order and appealed that decision to this Court. Dkt. Nos 16; 17; *see* 18 U.S.C. § 3145(a). The government contended that Moncada would be swiftly deported, preventing the government from prosecuting its case. Dkt. No. 16-1 at 3 ("ICE intends to begin deportation procedures

immediately and anticipates that Moncada will be deported to Mexico as early as April 6, 2022.”). The Court entered a stay (Dkt. No. 19) and was considering the parties’ briefs (Dkt. Nos. 25; 28) when Moncada pleaded guilty to a superseding information charging him with improper entry by an alien, in violation of 8 U.S.C. § 1325. Dkt. No. 31. This Court transferred (Dkt. No. 35) resolution of that charge—a Class B misdemeanor—to Judge Parker, who accepted Moncada’s guilty plea. Dkt. No. 36.

In light of Moncada’s guilty plea, the government no longer bears the burden to show that Moncada should be detained. Instead, Moncada must now show by clear and convincing evidence that he is not likely to flee. 18 U.S.C. § 3143(a)(1). Given that change, Judge Parker has vacated the release order (Dkt. No. 18) that forms the basis for the government’s appeal. Dkt. No. 39. This appeal is therefore moot. The government’s motion (Dkt. No. 25) is denied accordingly. The stay this Court entered pending resolution of this appeal is likewise dissolved as moot.

So ordered on May 13, 2022.



JAMES WESLEY HENDRIX
UNITED STATES DISTRICT JUDGE